



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

NOV - 3 2005

Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street N.W., Suite 300
Washington D.C. 20036-4505

Dear Mr. Bloch:

This is in response to your referral of a whistleblower disclosure that Dr. Stephen Ryter, Clinical Director of the Indian Health Service's Ancona-Cañoncito-Laguna (ACL) Services Unit is denying patients the opportunity to receive certain medical treatments that their physicians have deemed medically necessary (OSC File No. DI-05-1145).

In response to your referral, this department's Office of Inspector General (OIG) conducted a formal investigation. Enclosed is the resulting OIG Report of Investigation. The Report details the efforts made by OIG during the investigation, and it also fulfills the reporting requirements under 5 U.S.C. § 1213(d) that were outlined in your referral letter to me.

In summary, at the conclusion of the investigation no evidence of any violation of Federal law was uncovered. In addition, no evidence was found to indicate that Dr. Ryter or the ACL Service Unit did not provide the necessary care to the patients listed in the complaint.

Thank you for referring this matter of mutual interest. If you have any question, please contact Mr. Daniel Levinson, HHS Inspector General, at (202) 619-3148.

Sincerely,

Michael O. Leavitt

Enclosure

2005 NOV - 8 AM 12:17

U.S. OFFICE OF SPECIAL COUNSEL
WASHINGTON, D.C.
20036-4505

United States
Department of Health
And Human Services



OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS
REPORT OF INVESTIGATION CONCERNING

Dr. Stephen Ryter
Acoma-Canoncita-Laguna Service Unit
San Fidel, New Mexico

OI File# 6-05-00237-9

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Interviews and Investigative Activities

*Section not applicable in this report.

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REPORT OF DISCLOSURES REFERRED FOR INVESTIGATION OSC FILE NO. DI-05-1145

I. SUMMARY

Mark Zimmerman, M.D., a former Medical Officer at the Indian Health Service, Acoma-Canoncito-Laguna (ACL) Service Unit,¹ disclosed to OSC that Dr. Stephen Ryter, Clinical Director, routinely denies all requests for contract medical services. The ACL Service Unit relies upon contracts with other hospitals as a means of providing advanced medical services to its patients. Dr. Zimmerman alleges that Dr. Ryter's practice of denying all requests for contract services creates a substantial and specific danger to the health of the hospital's patients because patients are not receiving proper medical care.

II. THE INFORMATION DISCLOSED

Dr. Zimmerman, who has consented to the release of his name, has worked as a physician for 31 years. He was employed by the Indian Health Service from October 9, 2003, until October 7, 2004, when he was terminated.²

Dr. Zimmerman alleges that, from July 2004 until Dr. Zimmerman left the ACL Service Unit in October 2004, Dr. Ryter routinely denied all requests for contract medical services. Dr. Zimmerman explains that the ACL Service Unit only has sufficient resources to provide basic medical care to its patients. For advanced medical services that are more specialized or sophisticated, such as certain surgical procedures and chemotherapy treatments, the ACL Service Unit relies upon contractual agreements it maintains with private hospitals.

Dr. Zimmerman advises that, before July 2004, Dr. Ryter granted all or most requests for contract services. He states that, in June 2004, the hospital was re-accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and shortly thereafter, Dr. Ryter's previous practice of approving contract services ended abruptly. Beginning in July 2004, Dr. Ryter began denying all requests for contract services submitted by Dr. Zimmerman and the other physicians at the hospital. Dr. Zimmerman explains that many of the patients who seek care from the ACL Service Unit are not able to pay for medical treatment out of

¹ The Acoma-Canoncito-Laguna Service Unit provides health services to three Native American tribal groups: the Acoma Pueblo, the Laguna Pueblo, and the Canoncito Navajo.

² Dr. Zimmerman resides at
telephone number is

home

their own pocket; therefore, when Dr. Ryter denies their requests for contract services, their medical conditions often go untreated.

Because Dr. Zimmerman left the hospital in October 2004, he does not have first-hand information regarding the current situation at the hospital; however, based on his conversations with former colleagues, he believes Dr. Ryter's practice of denying necessary contract services continues to the present day.

Dr. Zimmerman provided specific examples of patients he treated during the time period of July 2004 to October 2004, whose health suffered because they were denied contract services that were medically necessary.

was diagnosed with lung cancer. Dr. Zimmerman recommended that he receive palliative chemotherapy, but Dr. Ryter denied the request. Both Dr. Zimmerman and family asked Dr. Ryter to reconsider his decision, to no avail. Ultimately, family sought assistance from Senator Pete Domenici, who successfully intervened on his behalf. Even though did eventually receive chemotherapy, Dr. Zimmerman notes that Dr. Ryter's initial decision to deny the request caused this patient's treatment to be delayed for three months. As far as Dr. Zimmerman is aware, this is the only instance when the hospital has reversed a decision by Dr. Ryter to deny contract services to a patient.

suffers from multi-nodular goiters. Dr. Zimmerman determined that she was at risk of developing hyperthyroidism, and, therefore, needed to receive radioactive iodine therapy. Dr. Ryter denied his request. Ultimately, decided to pay for the therapy herself, rather than forego treatment.

was diagnosed with kidney cancer. Dr. Zimmerman determined that needed to have his right kidney removed. Dr. Ryter denied the request.

Medical tests revealed that had a stone blocking her bile duct. Dr. Zimmerman determined that she needed surgery to remove the stone. He explained that, without this surgery, she was at risk of developing jaundice and/or a severe infection. Dr. Ryter denied Dr. Zimmerman's request for surgery.

Dr. Zimmerman asserts that the contract services he requested for these patients, along with several others, were medically necessary and were in accordance with the ordinary standard of care for each patient's condition. Copies of medical records submitted by Dr. Zimmerman concerning eight of his patients, including the four patients discussed above, are enclosed.

III. THE SPECIAL COUNSEL'S FINDINGS

Given Dr. Zimmerman's apparent expertise regarding the matters he has disclosed, the detail he has provided, and his first-hand knowledge of many of the incidents he has described, I have concluded that there is a substantial likelihood that the information Dr. Zimmerman provided to OSC discloses a substantial and specific danger to public health.

Enclosure

Requirements of 5 U.S.C. § 1213(d)

Any report required under subsection (c) shall be reviewed and signed by the head of the agency¹ and shall include:

- (1) a summary of the information with respect to which the investigation was initiated;
- (2) a description of the conduct of the investigation;
- (3) a summary of any evidence obtained from the investigation;
- (4) a listing of any violation or apparent violation of law, rule or regulation; and
- (5) a description of any action taken or planned as a result of the investigation, such as:
 - (A) changes in agency rules, regulations or practices;
 - (B) the restoration of any aggrieved employee;
 - (C) disciplinary action against any employee; and
 - (D) referral to the Attorney General of any evidence of criminal violation.

In addition, we are interested in learning of any dollar savings, or projected savings, and any management initiatives that may result from this review.

¹ Should you decide to delegate authority to another official to review and sign the report, your delegation must be specifically stated.

OFFICE OF INVESTIGATIONS
Office of Inspector General
DEPARTMENT OF HEALTH AND HUMAN SERVICES

File No: 6-05-00237-9

Date: August 22, 2005

Report of: Investigation

Office: Albuquerque Field Office
Dallas Regional Office

Section A – Background

CASE INITIATION

On May 2, 2005, the Albuquerque, New Mexico, Field Office for the Dallas, Texas Regional Office of the United States Department of Health and Human Services (USDHHS), Office of Inspector General, Office of Investigations, received the Office of Special Counsel complaint DI-05-1145.

OFFICE OF SPECIAL COUNSEL COMPLAINT BACKGROUND INFORMATION

From October 2003 to October 2004, Dr. Mark Zimmerman was employed as an inpatient physician with the Indian Health Service (IHS) Acoma-Canoncito-Laguna (ACL) Service Unit. The Acoma-Canoncito-Laguna (ACL) Service Unit serves the three Tribal groups in the immediate area: the Acoma Pueblo (population 3,500), the Laguna Pueblo (5,500) and the Canoncito Navajos (1,100). The Acoma-Canoncito-Laguna Service Unit consists of the ACL Hospital in Acomita, and health centers at Laguna and Canoncito. The hospital provides general medical, pediatric, and obstetric inpatient care with 25 beds. ACL also houses a Dialysis Unit and the New Sunrise Regional Treatment Center, a residential program for adolescents. The hospital offers a full range of outpatient and dental services as well as several specialty clinics, utilizing a combination of direct and contract services. Full diagnostic and treatment facilities support outpatient care. Well-baby, diabetic, prenatal and general medical clinics are scheduled weekly. The field health program consists of health services that include health education, public health nursing, social services, nutrition, school health programs, environmental health, and alcohol and substance abuse services. Dr. Zimmerman's duties while employed with the ACL Service Unit were to examine walk-in patients, patients with appointments, patients admitted to the ACL Service Unit, and patients who were transported to the ACL Service Unit.

Dr. Zimmerman disclosed to the U.S. Office of Special Counsel that Dr. Stephen Ryter, former Clinical Director of the ACL Service Unit, routinely denied all requests for contract medical services. The ACL Service Unit provides health services to three Native American tribal groups: Acoma Pueblo, the Laguna Pueblo, and the Canoncito Navajo. The ACL Service Unit relies on contracts with other Doctors and Hospitals to provide advanced medical services to its patients. Dr. Zimmerman alleges Dr. Ryter's denial of all requests for contract services creates a substantial and specific danger to the ACL's Service Units patients because the patients are not receiving the proper medical care.

Dr. Zimmerman alleges that from July 2004 until he was terminated from the ACL Service Unit in October 2004, Dr. Ryter routinely denied all requests for contract medical services. Dr. Zimmerman stated that the ACL Service Unit only has resources to provide basic medical care to its patients. For

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advanced medical services that are more specialized, such as certain surgical procedures and chemotherapy treatments, the ACL Service Unit relies upon contractual agreements it maintains with private hospitals.

Dr. Zimmerman further states that before July 2004, Dr. Ryter granted all or most requests for contract services. According to Dr. Zimmerman in June 2004, the ACL Service Unit was re-accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). JCAHO evaluates and accredits more than 15,000 health care organizations and programs in the United States. An independent, not-for-profit organization, the Joint Commission is the nation's predominant standards setting and accrediting body in health care. Since 1951, the Joint Commission has maintained state-of-the-art standards that focus on improving the quality and safety of care provided by health care organizations. The Joint Commission's comprehensive accreditation process evaluates an organization's compliance with these standards and other accreditation requirements. Dr. Zimmerman states that Dr. Ryter's previous practice of approving contract services ended abruptly shortly after the re-accreditation by JCAHO of the ACL Service Unit. Dr. Zimmerman explains in the OSC complaint that patients who seek care from the ACL Service Unit are not able to pay for medical treatment out of their own pocket; therefore, when Dr. Ryter denies their requests for contract services, their medical conditions often go untreated.

Dr. Zimmerman provided specific examples of patients he treated during the time period of July 2004 to October 2004, whose health suffered because they were denied contract services that were medically necessary. Below is a list of the patients Dr. Zimmerman provided in his complaint with his explanation given in the OSC complaint.

_____ was diagnosed with lung cancer. Dr. Zimmerman recommended that he receive palliative chemotherapy, but Dr. Ryter denied the request. Both Dr. Zimmerman and _____ family asked Dr. Ryter to reconsider his decision, to no avail. Ultimately _____ family sought assistance from Senator Pete Domenici, who successfully intervened on his behalf. Even though _____ did eventually receive chemotherapy, Dr. Zimmerman notes that Dr. Ryter's initial decision to deny the request caused this patient's treatment to be delayed for three months. As far as Dr. Zimmerman is aware, this is the only instance when the hospital has reversed a decision by Dr. Ryter to deny contract services to a patient.

_____ suffers from multi-nodular goiters. Dr. Zimmerman determined that she was at risk of developing hyperthyroidism, and therefore needed to receive radioactive iodine therapy. Dr. Ryter denied his request. Ultimately, _____ decided to pay for the therapy herself, rather than forgo treatment.

_____ was diagnosed with kidney cancer. Dr. Zimmerman determined that _____ needed to have his right kidney removed. Dr. Ryter denied the request.

Medical tests revealed that _____ had a stone blocking her bile duct. Dr. Zimmerman determined that she needed surgery to remove the stone. He explained that without this surgery she

was at risk of developing jaundice and or a severe infection. Dr. Ryter denied Dr. Zimmerman's request for surgery.

In the OSC complaint Dr. Zimmerman asserts that the contract services he requested for these patients, along with several others, were medically necessary and were in accordance with the ordinary standard of care for each patient's condition. Copies of medical records submitted by Dr. Zimmerman concerning eight of his patients, including the four patients above, were enclosed in the OSC report. A copy of these patients' notes are included in this Report of Investigation and are labeled EXHIBIT 1.

THE SPECIAL COUNSEL FINDINGS

According to the OSC report, given Dr. Zimmerman's apparent expertise regarding the matters he disclosed, the detail he provided, and his first hand knowledge of many of the incidents he described, the OSC concluded that there is a substantial likelihood the information Dr. Zimmerman provided discloses substantial and specific danger to public health.

ALLEGATION

In Dr. Zimmerman's OSC disclosure he alleges that Dr. Stephen Ryter, Clinical Director of the ACL Service Unit, Albuquerque, New Mexico, is denying patients the opportunity to receive certain medical treatments that their physicians have deemed medically necessary.

Dr. Zimmerman's OSC disclosure contains eight patients' names and supporting patient file information. A list of these patients who Dr. Zimmerman believes were denied additional care by Dr. Ryter are listed below:

Dr. Zimmerman did not provide any regulations or policies to support his OSC disclosure allegation.

INDIAN HEALTH SERVICE AND CONTRACT HEALTH SERVICES

The Indian Health Service (IHS), an agency within the Department of Health and Human Services, is responsible for providing federal health services to American Indians and Alaska Natives. The provision of health services to members of federally recognized tribes grew out of the special government-to-government relationship between the federal government and Indian tribes. This relationship, established in 1787, is based on Article I, Section 8 of the Constitution, and has been given form and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders. The IHS is the principal federal health care provider and health advocate for Indian people, and its goal is to raise their health status to the highest possible level. The IHS currently provides health services to approximately 1.5 million American Indians and Alaska Natives who belong to more than 557 federally recognized tribes in 35 states.

During this investigation the www.ihs.gov web site was used to research information concerning Indian Health Service (IHS) Contract Health Services (CHS). CHS are services provided by non-IHS facilities or providers by contract. Below are the results of this search concerning the allegations in the Office of Special Counsel referral dated April 25, 2005.

- **EXHIBIT 2** IHS CHS Overview
- **EXHIBIT 3** 42CFR136.21 CHS Definitions
- **EXHIBIT 4** 42CFR136.22 Establishment of CHS Delivery Areas
- **EXHIBIT 5** 42CFR136.23 Persons to Whom CHS Will be Provided
- **EXHIBIT 6** 42CFR136.24 Authorization for CHS
- **EXHIBIT 7** 42CFR136.25 CHS Reconsideration and Appeals
- **EXHIBIT 8** IHS Manual Part 2 Chapter 3 CHS Services to Indians and Others

MEDICARE AND MEDICAID

In 1965, the Social Security Act established both Medicare and Medicaid. Medicare was a responsibility of the Social Security Administration (SSA), while Federal assistance to the State Medicaid programs was administered by the Social and Rehabilitation Service (SRS). SSA and SRS were agencies in the Department of Health, Education, and Welfare (HEW). In 1977, the Health Care Financing Administration (HCFA) was created under HEW to effectively coordinate Medicare and Medicaid. In 1980 HEW was divided into the Department of Education and the Department of Health and Human Services (HHS). In 2001, HCFA was renamed the Centers for Medicare & Medicaid Services (CMS).

Medicaid is a program that pays for medical assistance for certain individuals and families with low incomes and resources. This program became law in 1965 and is jointly funded by the Federal and State governments (including the District of Columbia and the Territories) to assist States in providing medical long-term care assistance to people who meet certain eligibility criteria. Medicaid is the largest source of funding for medical and health-related services for people with limited income.

Section B – Investigation

On May 25, 2005, the HHS/OIG/OI Albuquerque Field Office contacted Chief Executive Officer Bill Thorn of the Acoma-Canoncito-Laguna Service Unit (ACL). Mr. Thorn indicated that Dr. Stephen Ryder no longer works at the ACL Service Unit and that he had been transferred to the Santa Fe, New Mexico Indian Health Services Hospital. Thorn also indicated that Dr. Mark Zimmerman was terminated from the ACL Services Unit in November 2004.

At the time of the interview, Mr. Thorn indicated he would provide the Albuquerque Field Office with a copy of the current ACL contract services policy with outside medical units and doctors concerning patients who need additional care that ACL cannot provide. On June 6, 2005, the Albuquerque Field Office received the above requested information. (**EXHIBIT 9**)

On June 7, 2005, the Albuquerque Field Office contacted LeAnne Rodriguez, Chairman of the Acoma-Canoncito-Laguna (ACL) Health Board, regarding a vote of "No Confidence" rendered by the ACL Health Board on November 19, 2004, against Dr. Stephen Ryter. Ms. Rodriguez indicated the circumstances regarding the "No Confidence" vote is contained the ACL Health Board minutes. In addition Ms. Rodriguez indicated the ACL Health Board had recommended Dr. Ryter's termination in a letter addressed to Bill Thorn, Chief Executive Officer of the (ACL) Service Unit, on

November 22, 2004. (**EXHIBIT 10**) Ms. Rodriguez indicated the ACL Health Board, as provided in the ACL Service Unit bylaws, is given the power to terminate employees of the ACL Service Unit.

Ms. Rodriguez indicated she would provide the Albuquerque Field Office with a copy of the ACL Health Board minutes and bylaws concerning this matter and any other information that may be relevant.

The Albuquerque Field Office has not received the promised information from Ms. Rodriguez. Many attempts were made to contact Ms. Rodriguez, but Ms. Rodriguez has not returned any of the calls from the Albuquerque Field Office.

Dr. Stephen R. Ryter was interviewed on June 9, 2005, by the Albuquerque Field Office. Dr. Ryter was employed with the ACL service unit as the Clinical Director from November 2003 to April 2005. During the interview Dr. Ryter reviewed the list of patients provide in Dr. Zimmerman's OSC complaint and indicated that all of the patients received the proper care and were referred according to the guidelines provided by IHS Rockville, MD, headquarters. In addition Dr. Ryter explained in great detail the appeals process to be used when patients feel they deserve additional care to be paid by the ACL Service Unit. For a copy of the entire interview report see **EXHIBIT 11**. During the interview Dr. Ryter provided a copy of his transfer letter from the ACL Service Unit to the Santa Fe Indian Hospital. (**EXHIBIT 12**)

Joseph A. Moquino was interviewed on June 23, 2005, by the Albuquerque Field Office. Mr. Moquino was employed as the Chief Executive Officer (CEO) of the IHS Acoma-Canoncito-Laguna (ACL) Service Unit from October 8, 2003, to July 31, 2004. During the interview Mr. Moquino described the process of how patients are received by the ACL Service Unit and the appeals process to be used by these patients when their additional medical needs are not paid for by the ACL Service Unit. Mr. Moquino indicated Dr. Ryter did not deny patients who needed further services while he was employed as the CEO of the ACL Service Unit. Mr. Moquino further stated Dr. Ryter was an excellent clinical director and was not aware of any problems between he and the ACL Service Unit staff. For a copy of the entire interview report see **EXHIBIT 13**.

Dr. Mark Zimmerman was interviewed on June 29, 2005, by the Albuquerque Field Office. Dr. Zimmerman was employed as an inpatient physician with the IHS Acoma-Canoncito-Laguna (ACL) Service Unit from October 2003 to October 2004. During the interview Dr. Zimmerman was given a copy of his complaint with a list of the patients. Dr. Zimmerman was unable to give any additional information or articulate why these patients should have been given Priority 1 status, beyond the fact they were sick and needed to the care. Dr. Zimmerman indicated the listed patients did not have any immediate life threatening conditions. Dr. Zimmerman was unable to clearly explain what the priority classifications were and what patient conditions fit into what priority. For a copy of the entire interview report see **EXHIBIT 14**.

On May 25, 2005, the Albuquerque Field Office contacted Ernestine Overfield, Human Resources Specialist for the Albuquerque Area Indian Health Service, to request any information regarding Dr. Ryter's transfer from ACL Services to the Santa Fe, New Mexico IHS Facility and if ACL is currently trying to fill Dr. Ryter's vacated position. On July 5, 2005, the Albuquerque Field Office received a letter concerning the status of the Clinical Director position for the ACL Service Unit. (**EXHIBIT 15**)

William Thorne Jr. was interviewed on July 6, 2005, by the Albuquerque Field Office. Mr. Thorne has been employed as the Chief Executive Officer (CEO) for the IHS Acoma-Canoncito-Laguna (ACL) Service Unit since August 2004 until present. According to Mr. Thorne all the doctors at the ACL Service Unit follow the same guidelines. The patient can immediately appeal to the ACL Service Unit

if given a low priority. If they are not given a higher priority or they feel their medical services should be paid by the ACL Service Unit they can then appeal to the IHS Albuquerque, New Mexico Area Office and then to the IHS Rockville, Maryland office. According to Mr. Thorne, occasionally patients will skip some of the initial appeals process and appeal to a higher office. For a copy of the entire interview see **EXHIBIT 16**.

During the interview Mr. Thorne provided a copy of an ACL Service Unit denial letter (**EXHIBIT 17**) and a copy of reasons of denials and statistics for the year 2004. (**EXHIBIT 18**)

During the interview Mr. Thorne was provided a list of patients that Dr. Zimmerman listed in his complaint who he alleged should have had their treatment paid by the ACL Service Unit. Mr. Thorne indicated he would have the patient files reviewed and provide an explanation as to why the patients were not referred for further treatment that would have been paid for by the ACL Service Unit. Below is a list of the patients provided:

On July 18, 2005, the above requested information was received (**EXHIBIT 19**). This information was revealed that the above patients received the proper care and that the appeals process was used appropriately.

Section C – Conclusion

In Dr. Zimmerman's OSC disclosure he alleges that Dr. Stephen Ryter, Clinical Director of the ACL Service Unit, Albuquerque, New Mexico, was denying patients the opportunity to receive certain medical treatments that their physicians have deemed medically necessary.

During the course of this investigation numerous interviews were conducted and various documents obtained and reviewed. These documents were reviewed and applied throughout this investigation.

At the conclusion of this investigation no evidence of any violations of federal law was uncovered. In addition, no evidence was found to indicate that Dr. Ryter or the ACL Service Unit did not provide the necessary care to the patients listed in Dr. Zimmerman's OSC complaint.

The information received during this investigation demonstrates that the procedures in place at the ACL Service Unit were used and the proper determinations of medical need and referrals were made.

On August 4, 2005, The Albuquerque Field Office presented the final Report of Investigation (ROI) to the United States Attorney's Office (USAO) for the District of New Mexico. On August 19, 2005, AUSA Mary Higgins responded, "I am unable to identify evidence of a federal criminal violation." (**EXHIBIT 20**)